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Area-Wide Soil Contamination Task Force – Meeting 4
June 12, 2002, Yakima, WA

Meeting Summary

The Area-Wide Soil Contamination Task Force met for the fourth time on June 12, 2002 in Yakima. The objectives of this meeting were to:

- Learn about and discuss the institutional approaches used in case studies of cleanup/land-use development projects in other states.
- Provide guidance and direction on ongoing and future project work, including protective measures that could be used to address area-wide soil contamination, preliminary estimates of the nature and extent of area-wide soil contamination in Washington, and the draft public involvement plan for the project.
- Discuss key issues and topics for deliberation at future Task Force meetings.

There have been a few changes to the Task Force membership since the last meeting. Greg Firn of the Wenatchee School District has accepted a job out of state and will likely be replaced on the Task Force by Mark Goveia, the principal of Sunnyslope Elementary School. In addition, the chartering agencies have invited Katherine Bridwell of Safeco Insurance and King County Councilmember Julia Patterson to serve on the Task Force.

Communication Report and Forecast

The Departments of Ecology and Health and several Task Force members reported on press contacts and other communications about the project that occurred since the May Task Force meeting. These communications included presentations at an environmental conference held by the Association of Washington Businesses, a second briefing for Yakima-area legislators, a presentation at a meeting of the Yakima County Commissioners, and press contacts with the *Yakima Herald-Republic* and Yakima TV stations. State Representative Jim Clements noted that he had participated in the Department of Ecology's briefings about the project and was attending this Task Force meeting to listen and observe. Task Force member Randy Phillips mentioned press coverage in the *Wenatchee World* about lead levels in children in the Wenatchee area and discussed how the Chelan-Douglas Health District was reviewing test data to determine whether Wenatchee area children have elevated blood lead levels.

Upcoming project communications include a presentation for the Washington Association of Realtors' land-use committee and a meeting with State Senator Karen Keiser about health concerns from the Tacoma smelter plume.

Discussion of Institutional Frameworks Case Studies

Lori Ahouse and Jennifer Tice of Ross & Associates Environmental Consulting gave a presentation and led a discussion about five institutional frameworks case studies of

efforts to identify and address area-wide soil contamination or similar issues in other states. The institutional frameworks case studies were as follows.

- Verdese Carter Park, Oakland, California. Verdese Carter Park is a city-owned park constructed on the site of a former battery factory. Alameda County, the Environmental Protection Agency (EPA), AlliedSignal, the City of Oakland, the U.S. Department of Housing and Urban Development, and community members implemented a coordinated strategy of education, outreach, removal of lead-contaminated soil, and lead-based paint abatement to address risks of exposure at the park and surrounding residences.
- Barber Orchard, Waynesville, North Carolina. Barber Orchard is a former apple orchard that has been partially developed into residential housing. After being notified by the State of North Carolina about pesticide contamination at Barber Orchard, EPA initiated an emergency removal of arsenic-contaminated soil from developed residential areas and, along with Haywood County and the State of North Carolina, educated residents about risks of exposure and individual protection measures.
- Bunker Hill, Idaho. Bunker Hill is a former mining and smelter area in the Idaho Panhandle. To address exposure risks from soil contamination in populated areas of Bunker Hill, the Panhandle Health District administers, monitors, and enforces a wide range of institutional protection measures, while the EPA and potentially responsible parties have implemented physical protection measures including soil removal, revegetation, and dust suppression.
- Lowell, Massachusetts. Lowell is a historically industrial city with many brownfields, which are abandoned or underutilized industrial or commercial properties with real or perceived contamination. To encourage brownfields redevelopment, the City of Lowell and the Commonwealth of Massachusetts have developed a variety of financial incentives—including state tax credits and deductions, municipal back tax abatement, and low-interest loans for cleanup—and liability protections—including a state-subsidized insurance program that covers cost overruns and third-party lawsuits and a covenant not to sue program.
- Mount Laurel, New Jersey. Mount Laurel is a historically agricultural township in which residential housing developments and public parks have been built on land that had historical pesticide contamination. To address historical pesticide contamination, Mount Laurel Township enacted a soil testing and cleanup ordinance for new developments and made recommendations to property owners living on former orchard land about individual protection measures. The State of New Jersey allows a wide variety of protective measures, including soil blending or tilling, to be used at pesticide contaminated sites and has institutional mechanisms, such as deed notice reporting requirements and a so-called “cap cop,” to ensure that physical protective measures remain effective.

Task Force members had a number of questions and comments about the institutional frameworks case studies. In general, Task Force members were interested in several aspects of the institutional approaches used in the case studies, including:

- Action triggers – how contamination problems were identified, why private parties and/or public agencies decided to take action at certain sites, how cleanup levels were established at sites, and why state and local programs were developed.

- Financing mechanisms for state and local government programs.
- The transfer of responsibilities and liability from potentially responsible parties and/or the federal government to local and/or state agencies, especially in terms of long-term management, monitoring, and enforcement of institutional protection measures.
- Responses of financial institutions and the real estate industry – how private institutions have responded to issues of liability and exposure at contaminated properties, in particular, disclosure obligations for real estate practitioners and the use of Phase I site assessments by lending institutions.

The Task Force thought that these issues would be important to consider in identifying institutional strategies that might be applicable to area-wide soil contamination in Washington. Task Force members observed that some of the liability protection programs in the case studies (e.g., covenant not to sue and innocent purchaser protection) were similar to existing EPA and/or Washington State programs, but that some of the taxing strategies used in the case studies could not be implemented in Washington without a constitutional amendment. Other discussion topics included the following.

- Task Force members discussed some of the challenges of long-term management of properties with residual contamination and observed that environmental law and real estate law differ in terms of the desired finality and duration of solutions.
- Some Task Force members engaged in a conversation about approaches to address potential public health risks, especially when health effects may not be observed in a particular community. This discussion highlighted the social dimension in how communities assess risk and decide whether to take action. For example, a few Task Force members discussed how British scientists tend to set acceptable levels of exposure based on the average population and target health interventions to the most at-risk populations, while American scientists tend to set acceptable levels of exposure based on the most at-risk populations and employ interventions that affect the overall population. A few Task Force members also suggested that increased blood lead testing might be warranted for children living in areas with soil contamination in Washington.

In addition to the general inquiries about institutional frameworks in the case studies, Task Force members specifically requested information on:

- Recommendations and outcomes from the New Jersey Historic Pesticide Contamination Task Force process.
- The legal decision in New Jersey stating that municipalities could not impose stricter requirements for site remediation than the state government.
- Liability protections in the case studies, including the Massachusetts Brownfields Redevelopment Access to Capital program, Covenant Not to Sue programs in New Jersey and Massachusetts, and the Innocent Purchaser Protection program in New Jersey.
- Property values at case-study sites.
- Studies of health effects at case-study sites.

- Examples of approaches used in Washington and in the Dalles and Hood River area of Oregon.

The Task Force agreed that these and other information requests concerning the case studies would be brought forth to the Task Force in the context of discussions about how institutional approaches might or might not work in Washington.

Common Project Terms and Definitions

As part of the presentation on case studies, Jennifer Tice reviewed several terms used in the project and their definitions:

- Protective measure: an action or combination of actions that can be taken to address area-wide soil contamination (includes individual, institutional, and physical protection measures, described below).
  - Individual protection measure: an action an individual can independently take to reduce his or her exposure to soil contamination (e.g., hand washing and removing shoes before entering the home).
  - Institutional protection measure: an action by government or an agreement between two or more parties that limits or prohibits activities that could result in exposure to contaminants or that could harm a physical protection measure (e.g., education, covenant, and zoning).
  - Physical protection measure: an action that reduces contamination levels or a physical barrier that prevents or limits exposure to contaminants (e.g., removing contaminants, fencing, capping, and blending).
- Institutional framework: a system or process to ensure that area-wide soil contamination problems are identified and to provide for implementation of protective measures in the short- and long-term (e.g., local planning ordinances, information requirements, contracts, and state environmental response requirements).
- Management area: a discrete area within area-wide contamination for which data and information are grouped together for the purpose of making decisions about protective measures or other issues (e.g., commercial/industrial property, undeveloped non-commercial/non-industrial property, and developed non-commercial/non-industrial property).

A few Task Force members suggested adding best management practices (e.g., protections for workers at a contaminated site) to the list of institutional protection measures and noted that there are costs and liabilities associated with best management practices.

Public Comments

Matt Bower, a landowner in the lower Yakima Valley, recommended that the Task Force and the chartering agencies spend more time determining whether there is a problem with area-wide soil contamination before discussing what to do about it. He expressed concern about potential risks to property values and noted that his family has experienced no long-term health effects from living near and operating orchards.

Tom Martin of Asarco noted that some of the approaches used in case studies (for example, at Bunker Hill) might not be practical for areas in Washington that have lower levels of soil contamination and large populations, such as in the Tacoma smelter plume. He said he was concerned that the Task Force and agencies were reinventing the wheel in not looking at what had been done in Ruston and North Tacoma (e.g., to address real estate concerns).

Update on Other Arsenic and Lead Activities

Jim Pendowski of the Department of Ecology and Jude Van Buren of the Department of Health updated the Task Force on recent agency activities related to arsenic and lead. Mr. Pendowski noted that the Department of Ecology received a public disclosure request from the Washington State Farm Bureau requesting records on the area-wide soil contamination project. Dr. Van Buren said the Department of Health was conducting blood lead screening events in White Center, Normandy Park, and South Seattle in June at the request of those communities. Activities occurring this summer include additional soil sampling in Normandy Park and Pierce County and an expansion of the enhanced blood lead screening program to additional health clinics.

Protective Measures Update

Dave Bradley of the Department of Ecology updated the Task Force on the activities of the protective measures workgroup (Work Group 2) and asked the Task Force to consider whether the workgroup's planned work products would meet the Task Force's needs in developing its findings and recommendations. Mr. Bradley described how the workgroup planned to analyze a menu of potential protective measures for each category of land use (e.g., schools) that would include options for both short-term and long-term responses.

Task Force members suggested that a single, simple list of potential protective measures, organized by the type of protective measure, might be a more useful way for the workgroup to organize its analysis. Specifically, Task Force members proposed organizing the protective measures into five categories:

- Education
- Land use controls
- Best management practices
- Physical barriers
- Reducing contamination

Task Force members began to discuss how combinations of these approaches might apply to area-wide soil contamination. During this discussion a number of Task Force members reiterated the need for protective measures that are appropriate given the nature of area-wide soil contamination and the level of potential risk such contamination may actually present. The Task Force also referred back to its charter and acknowledged that the charter does not call for the Task Force to undertake an assessment of the risks of arsenic and lead, or an evaluation of established arsenic and

lead cleanup levels. The Task Force had a long discussion about the nature of the science of toxicology and risk assessment, public health principles, and epidemiology. Some Task Force members thought that rather than discuss what could be done to address area-wide soil contamination, the Task Force should focus on gathering more data about health risks and effects, actual exposure to arsenic and lead, and the sources of exposure, and should consider amending the charter. Other Task Force members were not convinced that this type of epidemiological data is a necessary precursor to Task Force deliberations on how to address situations where concentrations of arsenic and lead in soil are above established cleanup standards. Many Task Force members believe that the actual risks posed by exposure to elevated levels of arsenic and lead in soil are small—and in general could be appropriately addressed using low-cost, low-technology approaches and through education rather than soil removal. Overall the Task Force remains very focused on the need to take a practical approach to responding to elevated levels of arsenic and lead in soil and to look at solutions that are commensurate with and appropriate to the problem.

The Task Force generally agreed that the protective measures workgroup should provide more information to the Task Force about specific protective measures before the Task Force could make any recommendations on which protective measures should be used. The Task Force asked the workgroup to further define and refine the list of potential protective measures in each of the five categories and to provide information on the cost and effectiveness of each protective measure, but not attempt to limit the types of sites or types of exposure conditions where protective measures might or might not be applicable. Task Force members expressed differing opinions about whether it would be useful for the workgroup to specifically evaluate the five categories of protective measures in terms of two types of land-uses—residential and non-residential.

In addition to details about specific protective measures, Task Force members also discussed the importance of knowing who would be the decision maker, who would implement and enforce the protective measures, how might liability be transferred, and who would bear the financial burden associated with the protective measures when thinking about how and where protective measures might be applied. Several Task Force members thought that the Task Force should spend time at the next Task Force meetings further exploring these institutional issues in the context of situations in Washington.

A number of Task Force members were concerned that the protective measures workgroup might get ahead of the Task Force and make policy recommendations. A few Task Force members noted that the Task Force had not sufficiently discussed the technical memorandum on site categories and protective measures at the previous Task Force meeting. The Task Force was assured that the purpose of the protective measures workgroup is to gather information to support Task Force deliberations—not to preempt Task Force decision-making.

Nature and Extent Update

Julie Wilson of Landau Associates presented interim results of the preliminary estimates analysis. She discussed the range of arsenic and lead concentrations found at smelter sites in Washington, predictions of average arsenic and lead concentrations in former

orchard areas, acreage estimates for land with potential contamination from lead arsenate pesticide use, and estimates of lead concentrations along roadsides. The predictions for agricultural areas were based on historical data on the amount of land in agriculture and assumptions about the average number of trees per acre and application rates of lead arsenate. A number of Task Force members strongly questioned the accuracy of the acreage estimates, noting that the estimates appeared to be too large in comparison to the size of the counties and the amount of land currently in agricultural production. Task Force member Frank Peryea said he would work with Dr. Wilson to refine estimates of the area of land potentially contaminated with lead arsenate in Washington.

Dr. Wilson also gave a brief overview of the sampling guidance that the nature and extent workgroup would be developing. A few Task Force members suggested that the sampling guidance should clearly outline the intention of the guidance and describe any disclosure issues.

Draft Public Involvement Plan

Sarah Hubbard-Gray of Hubbard-Gray Consulting in Spokane reviewed the approach to public involvement for the project, described the information used to produce the draft public involvement plan, and outlined the basic features of the plan. The public involvement plan has two main components:

- Ongoing outreach, consistent with the Task Force communication principles, through means such as public notices, educational materials, project web page, and responses to media inquiries.
- Focused public outreach when the Task Force is developing findings and recommendations through means such as focus group meetings, stakeholder interviews, and public workshops.

A few Task Force members commented that the public involvement plan seemed extensive and asked whether the plan followed a standard agency format. Linda Hoffman and Dawn Hooper of the Department of Ecology explained that the plan was developed specifically for this project though is similar to the approach used in the Model Toxics Control Act (MTCA) policy advisory committee process. Task Force members also suggested that the agencies coordinate with the King County Health Department to identify possible audiences for the project and noted that public perspectives on area-wide soil contamination issues might differ on either side of the Cascades.

Public Comment

No audience member commented during the afternoon opportunity for public comment.

Key Issues for Upcoming Task Force Meetings

Bill Ross of Ross & Associates asked Task Force members to consider how the Task Force should move forward in answering the questions in the Task Force charter about strategies to address area-wide soil contamination, especially in light of the Task Force's discussions on the connections between toxicity, exposure, observed health effects, and

causality. To move forward with the process, the Task Force was asked to consider whether a letter should be sent to the agencies outlining the Task Force's perspectives on the health issues, which are not within its charter, and urging the State to do more to understand the health effects.

Task Force members expressed varying levels of confidence in how the Task Force would be able to find answers and agree on recommendations to the agencies, but all agreed that it was worth the effort to proceed. A few Task Force members commented that developing recommendations would depend on having good information and on determining what the actual risk of elevated levels of arsenic and lead in soil are, so people can make informed choices about how much risk they are willing to accept. Other Task Force members noted that the *status quo* for which the Task Force is developing alternatives is the potential application of MTCA at sites with lead and arsenic above cleanup levels, rather than not taking any action and that it is important that the Task Force focus on finding practical, reasonable alternatives to application of the standard MTCA process at area-wide soil contamination sites. The Task Force also identified a few important issues for the future:

- Public health – having the State learn more about the actual health of Washington residents who may be exposed to elevated levels of arsenic and lead and determining whether additional health studies might be warranted in targeted areas.
- Engagement with the press – considering whether the Task Force might want to be more proactive regarding press coverage.
- MTCA – understanding the current system in order to discuss what might be done better.

The dialogue ended with a collective sense that the Task Force should move forward to address its appointed tasks.

Next Steps

- The facilitation team will call each Task Force member before the next meeting to discuss project progress and the path forward.
- Julie Wilson and Frank Peryea will discuss preliminary estimates of the area of land in Washington with the potential for lead arsenate soil contamination, with a view towards refining the acreage estimates.
- The Protective Measures Work Group will further delineate and describe protective measures that could be used to address area-wide soil contamination to inform the Task Force's deliberations.
- Contractor support staff will follow up on the Task Force's questions regarding institutional approaches used in the case studies.
- The next Task Force meeting will be in Tacoma on July 25 and will include a joint learning discussion on MTCA, including case studies of cleanup and development projects in Washington, as well as updates on protective measures and institutional frameworks that could be applicable for addressing area-wide soil contamination in Washington.

Members in Attendance
Bob Arrington, Washington State Department of Agriculture
Katherine Bridwell
Loren Dunn, Riddell Williams for Washington Environmental Council
Ted Gage, Washington State Office of Community Development
Steve Gerritson, Sierra Club
Jim Hazen, Washington Horticultural Association
Linda Hoffman, Washington State Department of Ecology
Steve Kelley, Windermere Real Estate, Wenatchee
Scott McKinnie, Far West Agribusiness Association
Laura Mrachek, Cascade Analytical
Frank Peryea, Washington State University Tree Fruit Research and Extension Center
Ray Paolella, City of Yakima
Randy Phillips, Chelan-Douglas Health District
Paul Roberts, City of Everett
Ken Stanton, Douglas County Commission
Jude Van Buren, Washington State Department of Health
Mike Wearne, Washington Mutual Bank

Members Unable to Attend
Mark Goveia, Sunnyslope Elementary School
Steve Marek, Tacoma/Pierce County Health Department
Marcia Riggers, Washington State Office of Schools and Public Instruction
Craig Trueblood, Preston Gates & Ellis

Consultant Support
Julie Wilson, Landau Associates
Sarah Hubbard-Gray, Hubbard-Gray Consulting
Lori Ahouse, Ross & Associates Environmental Consulting
Elizabeth McManus, Ross & Associates Environmental Consulting
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